BRB No. 11-0578
OWCP No. 07-190749

DAVID A. DORAZIO	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
RIVER MARINE MANAGEMENT, INCORPORATED	)	DATE ISSUED: 07/27/2011
	)	
	)	
Employer-Petitioner	)	ORDER

Employer appeals the Order Denying Motion to Quash Subpoena Duces Tecum (Case No. 07-0190749) of Administrative Law Judge Lee J. Romero, Jr., dated April 20, 2011. 33 U.S.C. §921; 20 C.F.R. §802.205. The Board acknowledged this appeal on June 3, 2011. Employer has not filed a brief in support of its appeal. 20 C.F.R. §802.211.

This case is presently pending before the district director. Claimant sought, and the administrative law judge issued, a subpoena for the production of certain documents. *See Maine v. Brady-Hamilton Stevedore Co.*, 18 BRBS 129 (1986)(only administrative law judge, and not district director, can issue subpoena). Following service of the subpoena on employer, employer filed a motion with the administrative law judge to quash the subpoena. In an Order dated April 20, 2011, the administrative law judge denied employer's motion, and this appeal followed.

Employer's appeal is of a non-final, or interlocutory, order and the Board ordinarily does not undertake review of non-final orders. *See Newton v. P&O Ports Louisiana, Inc.*, 38 BRBS 23 (2004); *Tignor v. Newport News Shipbuilding & Dry Dock Co.*, 29 BRBS 135 (1995); *Butler v. Ingalls Shipbuilding, Inc.*, 28 BRBS 114 (1994). The Board will undertake interlocutory review in that "small class [of cases] which finally determine claims of rights separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Cohen v. Beneficial Industrial Loan Co.*, 337 U.S. 541, 546 (1949)(the collateral order

doctrine);[1] *see also United States v. 101.88 Acres of Land, Etc.*, 616 F.2d 762, 765 (5th Cir. 1980). If the order appealed from does not satisfy the criteria of the collateral order doctrine, the Board will undertake interlocutory review nonetheless if, in its discretion, it is necessary to properly direct the course of the adjudicatory process. *See Hardgrove v. Coast Guard Exchange System*, 37 BRBS 21 (2003); *Baroumes v. Eagle Marine Services*, 23 BRBS 80 (1988).

The Board generally declines to review interlocutory discovery orders, such as the one in the present case, as they fail to meet the third prong of the collateral order doctrine, that is, they are not "effectively unreviewable" after a final order issues.[2] *Newton*, 38 BRBS 23; *Butler*, 28 BRBS 114. Moreover, as the administrative law judge is afforded broad discretion in authorizing discovery, it is not necessary for the Board to direct the course of the adjudicatory process in this case. *See Baroumes*, 23 BRBS 80. Thus, we dismiss employer's appeal of the administrative law judge's interlocutory discovery order.

[1]Under the collateral order doctrine, review of an interlocutory order will be undertaken if the following three criteria are satisfied: (1) the order must conclusively determine the disputed question; (2) the order must resolve an important issue that is completely separate from the merits of the action; and (3) the order must be effectively unreviewable on appeal from a final judgment. *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271 (1988); *Butler v. Ingalls Shipbuilding, Inc.*, 28 BRBS 114 (1994).

[2]An exception to this general practice concerning discovery orders involves cases involving serious due process considerations. *See Niazy v. The Capital Hilton Hotel*, 19 BRBS 266 (1987). The motion to quash filed with the administrative law judge does not raise any such concerns.

Accordingly, employer's appeal is dismissed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge